



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

**STATE HOUSE STATION 101
OFFICE OF THE SECRETARY OF STATE
AUGUSTA, MAINE 04333**

March 11th, 1993

Minutes of the March 11th, 1993 Commission meeting held in Room 107 of the State Office Building, Augusta.

Present: Chair Robert P. McArthur; members Virginia Chamberlin, Richard G. Morton, Robert E. Tierney, Paul E. Violette, Peter B. Webster; Counsel Cabanne Howard

Absent: Members Gregory G. Cyr, Joseph B. Ezhaya, Richard L. Trafton

The meeting was called to order at 2:15 p.m. The minutes of the December 1st, 1992 meeting were accepted as written.

The first item of business, taken out of order, was the request of Representative Aliberti for guidance on the question of whether surplus campaign funds may be used to pay for expenses associated with attending an NCSL conference. Mr. Violette moved, and Mr. Webster seconded, to advise Representative Aliberti that such expenditures are permissible under 21-A MRSA Section 1017(8) (A). The motion carried unanimously.

Next, the Commission considered the complaint of David Martucci against the Rockland-Thomaston Chamber of Commerce. Mr. Martucci suggested the Chamber may have violated the reporting laws. Staff findings indicated that the law requires corporations to report internal political communications if the cost of distributing such communications is more than \$50; that the Chamber may have violated the reporting laws in failing to disclose expenditures associated with distribution of a mailing. Clayton Fowlie was present and represented the Chamber of Commerce. He explained that the primary purpose of the mailing was to express the Chamber's willingness to allow him to continue as Executive Director, if elected to the Legislature. He pointed out that the mailing included literature that had no political significance, and that costs associated with preparing and mailing the communications were less than \$50 when calculated on a pro-rata basis. Mr. Violette expressed the view that certain language in the letter was overtly political. Mr. Fowlie then conceded that the Chamber may have committed an error in judgment, but claimed that it sent no follow-up letters nor did it actively campaign for anyone.

Mr. Webster then moved, and Mr. Tierney seconded, to dismiss the complaint. The motion carried 3-2, Messrs. Tierney and Webster and Ms. Chamberlin voting in the affirmative; Messrs. Violette and Morton voting in the negative; Chairman McArthur abstaining.

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

The Commission then considered a second complaint of Mr. Martucci. The complaint involved three separate political advertisements, none of which carried the required disclaimer. One ad was attributed to Ms. Mary Whitney, a second to Mr. John Hart, and a third to Mr. Robert Liberty. Two of the ads supported the candidacy of Mr. John McCormick and a third advocated the defeat of Speaker John L. Martin. Mr. John McCormick appeared on behalf of the respondents. He claimed that each of the respondents had obtained his permission to place the ads in the Rockland Courier-Gazette, and that the transactions were duly disclosed in reports filed with the Commission. He argued that it would be unfair to penalize the respondents because they were "just average citizens" who were not normally involved in the election process. Mr. Violette moved, and Ms. Chamberlin seconded, to assess no penalty. The motion carried.

Next, the Commission reviewed the complaint of Mr. Jay Hibbard of the Maine Republican Party concerning a flier distributed by the Maine State Employees' Association (MSEA). The flier carried no disclaimer. Allegedly, the fliers were placed on vehicles parked in the State House parking lot. Ms. Canavan abstained from offering recommendations on the basis that she is a dues-paying member of MSEA. Mr. Richard Trahey, Associate Director of MSEA was present and represented MSEA. He explained that the cost of printing and distributing the fliers amounted to no more than \$20; that the intent was to reach MSEA members only. He said that he personally had supervised the distribution and that he saw no fliers attached to parked vehicles. Counsel Cabanne Howard advised members that communications from an organization to its members are exempt from the disclaimer law. Mr. Tierney then moved that the Commission find MSEA in violation of the disclaimer law and that a penalty of \$100 be assessed. Mr. Morton seconded the motion. After some discussion, members arrived at the consensus that a fine of \$100 might be excessive given that MSEA has no record of previous violations. Consequently, Mr. Tierney withdrew his motion, and moved instead to assess a penalty of \$50. The motion carried unanimously.

The Commission then considered the complaint of Representative Coffman against Maine National Abortion Rights Action League (NARAL) concerning a disclaimer violation. Findings showed that NARAL had, in fact, mailed out a political flier that advocated the election of several clearly identified candidates. The flier did not carry the required attribution. Mr. Violette moved to assess NARAL a \$50 penalty and Mr. Webster seconded. The motion carried unanimously.

Next, the Commission reviewed the complaint of Representative James Handy against the Committee for Governmental Reform. Representative Handy questioned whether the Committee had violated the disclaimer laws. Findings showed that the Committee had distributed a mailing which included several news clippings along with a note from the Committee's campaign coordinator, Jeff Sommer. After a brief discussion of the law, Commission members concluded that 21-A MRSA Section 1014 did not apply because none of the documents in question expressly advocated the election or defeat of a clearly identified candidate or ballot issue. On that basis, Mr. Violette moved to assess no penalty. The motion was seconded by Mr. Webster and carried unanimously.

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

The Commission then considered the appeal of the Committee for 99/33 from a \$500 penalty assessed at the December 1992 meeting. The penalty was assessed for a late pre-election filing. Commission records show the assessment represented a 75 percent reduction from the actual amount accrued. Ms. Katherine Adams was present on behalf of the Committee for 99/33. She blamed the late filing on "internal communication" problems, and asked the Commission to consider that the Committee had very little money left in its account. After a brief discussion, Mr. Webster moved to reduce the penalty to \$100. The motion, seconded by Mr. Tierney, passed unanimously.

Next, the Commission considered the request of Senator Richard Carey for an advisory opinion on several issues dealing with potential conflicts of interest. Senator Carey stated that he serves in the following capacities:

- 1) Overseer of the Poor in the Town of Belgrade,
- 2) Director of the Notre Dame Waterville Federal Credit Union,
- 3) Registered Professional Land Surveyor.

Senator Carey further offered that his wife is the Deputy Registrar of Deeds for Kennebec County.

Senator Carey asked the Commission's guidance on the propriety of his voting on bills relating to

- 1) Credit unions,
- 2) Banks expanding services,
- 3) The profession of surveyors as a class,
- 4) The State Retirement System, and
- 5) The county budget.

The Commission ruled that in general there would be no conflict in Senator Carey's voting on bills relating to issues I through 4, if the benefit derived from the legislation was not unique to him or a member of his family. However, the Commission further advised Senator Carey to refrain from voting on County budget issues in order to avoid all conflicts – both real and apparent.

The Commission then considered Mr. Jay Hibbard's complaint against Representative George Kerr concerning Mr. Kerr's failure to properly disclose a letter signed by him and distributed to voters. The letter supported the candidacy of Peter Danton. Mr. Hibbard also questioned the propriety of Representative Kerr's using Legislative stationery for political purposes.

Representative Kerr was present and represented himself. He pointed out that no effort was made to conceal the fact that he authored the letter; that the document was distributed and paid for by Mr. Danton and that no attempt was made to circumvent the law. Finally, he pointed out that the letterhead used for the communication was designed and paid for by himself. Mr. Webster then moved to assess Representative Kerr a \$25 penalty for a disclaimer violation. The motion was seconded by Mr. Tierney and carried unanimously. Mr. Webster then moved, and Mr. Tierney seconded, to dismiss the issue relating to the use of Legislative stationery. The motion carried.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Mr. Webster then raised the question of whether the Commission should bear the appeal of Mr. Elden McKeen before reviewing the report of the Attorney General and the U.S. Attorney concerning ballot tampering in the District #35 race. There was general agreement that a postponement was in order; hence the hearing was rescheduled for March 23rd.

Next, the Commission considered the appeal of Senator Leo Kieffer from a penalty of \$100. The penalty was assessed for late submission of a 48-hour report. Mr. Violette moved to deny the appeal and Mr. Webster seconded the motion. The motion carried with one abstention.

The Commission then ruled on the lateness of post-election reports due December 15th, 1992 and semiannual reports due January 15th, 1993.

Mr. Violette moved, and it was seconded, to accept the recommendations of staff concerning the following late post-election reports:

Candidate's name	Days late	Amount assessed
David Bouthilette	13	\$30
David Garnier	11	0
Gary Merrill	29	\$72
James Bryant	36	0
Jill Holmes	48	0

The Commission accepted staff recommendations concerning the following post-election reports not yet filed:

Candidate's name	Amount Assessed
Ave Maria Dover	\$500
Peter Harvey	\$1500
Jeffrey Lowell	\$500
Terrence Parker	\$500

Mr. Violette moved, and it was seconded and voted to accept staff recommendations concerning the following late semiannual reports:

Candidate's name	Days late	Amount assessed
Zachary Matthews	6	No penalty
Neal Weinstein	6	No penalty
Joseph Brennan	5	\$25

It was then moved to accept recommendations concerning the following semiannual reports not yet filed:

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Candidate's name	Amount assessed
------------------	-----------------

Bradford Boutilier	\$290
Donald Lewis III	\$11

The Commission also assessed both Mr. Boutilier and Mr. Lewis an additional \$10 for each business that the reports are late up to the maximum of \$500.

Next the Commission considered the lateness of January quarterly reports of Maine Citizens for Utility Rate Reform and Maine Standard PAC. Mr. Violette moved, and it was seconded, to assess no penalty because the committees conducted no activity during the filing period covered by the report.

The Commission then considered the complaint of Mr. Jay Hibbard against candidate Deirdre Nice. Mr. Hibbard alleged that a political advertisement paid for by Ms. Nice was not in compliance with the disclaimer law. Staff findings showed that the ad was, in fact, in violation; but it was also revealed that Ms. Nice later contacted the newspaper and asked the editor to include a disclaimer in all subsequent ads run by her campaign. On that basis, Mr. Violette moved, and it was seconded and voted, that no penalty be assessed.

The next item reviewed was a staff recommendation calling for reconsideration of a penalty previously assessed against Mr. Douglas Lane. The \$2,500 penalty was assessed for Lane's failure to file several election year reports. A report finally submitted by Mr. Lane in December showed that he spent only \$335.00 on his entire campaign. The staff recommended reducing the penalty to an amount commensurate with the amount spent; i.e., \$335.00. Mr. Webster moved to accept the recommendation and Mr. Tierney seconded. The motion carried unanimously.

The Director then asked for guidance in responding to the following inquiry:
Do the services of an attorney rendered without compensation for the benefit of a candidate who filed an appeal, constitute a campaign contribution?

It was the view of the Commission that such services are not considered a contribution pursuant to 21-A MRSA Section 1012(2) (B) (1).

The meeting adjourned at 4:25 p.m.

Respectfully submitted,

Marilyn Canavan
Director